

ENFORCEMENT CONFIDENTIAL**November 28, 2016****AES Puerto Rico****Issue**

Our concerns regarding potential ongoing releases in Puerto Rico of "Agremax," an aggregate of ash generated by the AES PR coal-fired power plant in Guayama, have been largely allayed. Since October 2015, AGREMAX has been covered by the EPA CCR Rule, which precludes uncontrolled land placement. Further, under a 2014 EQB Resolution, AGREMAX can only be disposed only in appropriate lined landfills or beneficially reused with prior EQB approval.

Nonetheless, the management and disposal of AGREMAX remains under litigation in several courts. AES PR is litigating in two courts with respect to the CCR final rule and the management of AGREMAX, and a case before the PR supreme court between Penuelas landfill owner Ecosystems, Inc., and the Municipality of Penuelas awaits resolution. Protests by citizen's groups over the disposal of AGREMAX in the EC Waste Penuelas Valley Landfill are ongoing and arrests of citizens blocking access to the landfill were made as recently as November 2016.

StatusCoal Combustion Residuals (CCR) Final Rule Litigation

The EPA CCR rule was finalized in April 2015 and became effective October 2015. AES, amongst a group of seven petitioners - the Utility Solid Waste Activities Group, et al. - has sued the Agency in the U.S. Appeals Court for the District of Columbia to stay the requirements and vacate portions of the rule. EPA held discussions with the petitioners, and the court subsequently narrowed the issues and remanded provisions of the rule for revision by EPA.

Guayama Power Plant AGREMAX Storage

Construction of an impervious liner under the AGREMAX pile originally planned for early 2016 has not commenced, despite the liner and other materials being present at the facility. ORCR/OGC has determined that even if the liner is constructed, the pile will remain an "existing landfill" subject to the rule. The October 2015 EQB solid waste permit for the AGREMAX pile was challenged by AES in PR appellate court. The matter remains in litigation and EQB's argument of its Motion to Dismiss and Summary Judgement request was heard in August 2016.

Agremax Disposal

AES told us in January 2016 that AGREMAX was being sent for disposal in the lined EC Waste El Coqui landfill in Humacao and was not being shipped to the mainland. We understand from a November 25, 2016, news report that the resumption of AGREMAX shipments to the EC Waste Penuelas Valley Landfill have been disrupted by protestors blocking access to the landfill. The article detailed citizen's claims that AGREMAX dust was being released from the landfill and by trucks transporting AGREMAX to the landfill. CEPD had inspected the El Coqui and Penuelas Valley landfills in May 2016 and confirmed that appropriate operational controls were in place, including fugitive dust controls for transport and disposal. CEPD also inspected the AES Guayama plant in August 2016 and found that the AGREMAX pile had been substantially

reduced. EC Waste had litigated in the Ponce court over a citizen's group blocking of access to the landfill, and the court upheld the municipal ban, taking into consideration a July 2016 federal district court's rejection of an AES claim that the Peñuelas and Humacao ordinances banning Agremax disposal were unconstitutional and preempted by RCRA. The EC Waste case was subsequently heard by the PR court of appeals, who on November 9, 2016, reversed the Ponce court decision and allowed Agremax disposal to resume at the Penuelas Valley Landfill.

CWA Order

AES has complied with a March 2015 CWA Consent Order for stormwater permit violations, as confirmed in an August 2016 inspection, and CEPD is contemplating closing out the Order.

ATSDR

ATSDR is considering a request to investigate potential health effects from the alleged release of Agremax at the Penuelas Valley Landfill, and DECA has provided requested documents.

Options and Recommendations

DECA will remain in close coordination with EQB, and, as necessary, ORCR, concerning the applicability of CCR rule requirements and other developments.

CASD, in consultation with ORCR, has discussed potential authorities, options, and resources for a soil and groundwater investigation at PR "legacy" sites such as the AES North Well Field, and the results of these discussions were shared with DESA. It appears the Region does not have adequate funding to conduct the comprehensive study necessary to properly characterize the subsurface transport of contaminants from the land placement of Agremax.

CEPD (Jose Font) has suggested to the governor's office that the landfills meet with the community and confer with their technical representative(s) and EQB senior management to open up a dialog to address community concerns about fugitive dust release and other matters.

Background

EQB Agremax Resolution

At our urging, EQB issued a September 2014 Resolution retracting its earlier Resolutions on Agremax and requiring that Agremax either be disposed, or beneficially used only with prior EQB approval. Also at our and EQB's urging, the PR Electric Power Authority and AES entered into an amended power purchase agreement in July 2015 that allowed on-island disposal, which had been restricted under the previous agreement.

Dominican Republic Lawsuit

In 2006, AES was sued in Virginia by the government of the Dominican Republic for alleged conspiracy and dumping of 80,000 Tons of coal ash in 2003/2004 generated by its subsidiary AES PR. The case was settled in 2007 for a reported \$6 M, and ORC notes that the settlement stated that AES had not violated Dominican Republic law. In April 2016, AES settled a 2009 lawsuit in Delaware superior court with three families claiming birth defects resulting from the disposal in the Dominican Republic of Agremax generated at the AES Guayama plant.